

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Dionne et al.

Serial No.: 10/814,801

Filed: March 31, 2004

For: OSMOTIC PUMP WITH MEANS
FOR DISSIPATING INTERNAL
PRESSURE

Confirmation No.: 4974

Examiner: Unknown

Group Art Unit: 3763

Attorney Docket No.: 3139-6349.1US
(ALZ5018/2697)

NOTICE OF EXPRESS MAILING

Express Mail Mailing Label Number: EL994824269US

Date of Deposit with USPS: December 14, 2004

Person making Deposit: Steve Wong

**RESPONSE TO NOTICE TO FILE MISSING PARTS
OF NONPROVISIONAL APPLICATION INCLUDING
PETITION UNDER 37 C.F.R. 1.47(a) TO
SUSPEND OR WAIVE THE RULES**

Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In connection with the above-referenced patent application, enclosed please find a copy of the Notice to File Missing Parts of Nonprovisional Application and Check No. 21203 in the amount of \$992.00 for the filing fee and surcharge, along with Declaration and Power of Attorney (9 total pages) for inventors, Keith E. Dionne, Craig R. Davis and John R. Peery.

Inventor Robert Mosbauer has not been responsive in executing the Declaration.

12/15/2004 MAXMED 00000000 201485 13914001

02 F001434

120.00 03

The relevant background facts are set forth below, as is a Petition to Suspend or Waive the Rules Pursuant to 37 C.F.R. 1.47(a). Check No. 7121 in the amount of \$130.00 is attached for petition fees under 1.17(h).

Statement of Facts

Applicants' attorney filed the application without an executed Declaration on March 31, 2004 as a Utility Conversion of Provisional Application No. 60/459,296 filed March 31, 2003. Applicants' attorney received a Notice File Missing Parts of NonProvisional Application dated June 14, 2004.

Applicants' attorney forwarded a Declaration for Patent Application (with Power of Attorney) to each inventor individually on June 24, 2004 for execution. Inventors, Keith E. Dionne, Craig R. Davis and John R. Peery each executed a Declaration, the originals of which are enclosed herewith.

Applicants' attorney was advised that the inventor Robert Mosbauer had left the employ of ALZA Corporation and, indeed, Mr. Mosbauer was a resident of Daly City, California at the time the application was filed after leaving the employ of ALZA Corporation where he was employed at the time of the filing of the provisional application. Applicants' undersigned attorney was provided an address in Daly City, California for Mr. Mosbauer, and Mr. Mosbauer was sent a Declaration for signature by Federal Express on June 24, 2004, with a preaddressed, postage prepaid envelope in which to return the executed document to Applicants' attorney. There was no indication whether or not Mr. Mosbauer actually received the Declaration, and telephone calls were placed to Mr. Mosbauer at least on September 8, 2004, October 13, 2004, November 9, 2004 and December 9, 2004. A message was left on October 13, 2004. No person answered the telephone at any of the foregoing times or responded to the messages left, and a Declaration executed by Mr. Mosbauer was not received by Applicants' attorney.

On September 22, 2004, documents were sent to Mr. Mosbauer via e-mail from Cyndi S. King for both US and related foreign cases. Neither a response nor executed documents have been received for any of the US or related foreign cases causing Applicants' attorney to file a notarized copy of his Employment Agreement in place of the appropriate documents.

Since by October 13, 2004, Applicants were already in the first month of an extended time period for response to the Notice to File Missing Parts, another copy of the Declaration was sent to Mr. Mosbauer on October 13, 2004 with a preaddressed, postage prepaid envelope in which to return the executed document to Applicants' attorney, again by Federal Express, with delivery confirmation for the package. The Federal Express package was delivered on October 14, 2004 at 1:21 PM. On the same date, documents were transmitted electronically to the Mr. Mosbauer's e-mail address. The Declaration executed by Mr. Mosbauer was not received by Applicants' attorney.

Again, on November 9, 2004, Applicants were already in the second month of an extended time period for response to the Notice to File Missing Parts, another copy of the Declaration was sent to Mr. Mosbauer with a preaddressed, postage prepaid envelope in which to return the executed document to Applicants' attorney, again by Federal Express, with delivery confirmation for the package. The Federal Express package was delivered on November 10, 2004 at 1:37 PM. Again, documents were transmitted electronically via e-mail. Again, the Declaration executed by Mr. Mosbauer was not received by Applicants' attorney.

Finally, on December 9, 2004, Applicants were in the third month of an extended time period for response to the Notice to File Missing Parts, a copy of the Declaration was sent electronically to Mr. Mosbauer's e-mail address. The Declaration executed by Mr. Mosbauer was never received by Applicants' attorney.

The facts of the contact are set forth in the DECLARATION OF DEBRA L. MITCHELL REGARDING EFFORTS TO REACH INVENTOR ROBERT MOSBAUER enclosed herewith.

To summarize the current situation, numerous contacts were made to the inventor, Robert Mosbauer, by Federal Express, e-mail and telephone by Debra L. Mitchell and Cyndi S. King, paralegals with TraskBritt, P.C. Declarations were received by Federal Express delivery on or around June 25, 2004, on October 14, 2004, and on November 10, 2004 as well as by e-mail and as attachments on September 22, 2004, October 13, 2004, November 9, 2004 and December 9, 2004. Repeated attempted telephone contacts by Ms. Mitchell to Mr. Mosbauer have proven

fruitless, as nobody will answer the phone, and it is evident from Mr. Mosbauer's conduct that, for some unknown reason, he will not execute the Declaration.

Accordingly, Applicants herein respectfully petition for suspension or waiver of the rules pursuant to 37 C.F.R. 1.47(a), and specifically for a waiver of the requirement for a Declaration executed by inventor Robert Mosbauer as it is apparent that he has *de facto* refused to execute and return to Applicants' attorney the Declaration received by him on the dates indicated above.

Applicants submit herewith in response to the Notice to File Missing Parts:

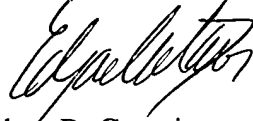
- 1) Copy of Notice to File Missing Parts of Application with application filing and surcharge fees;
- 2) Declarations executed by Keith E. Dionne, Craig R. Davis and John R. Peery (9 total pages);
- 3) Declaration by Debra L. Mitchell Regarding Efforts to Reach Inventor Robert Mosbauer with attached Exhibits A through E;
- 4) The required fee under 37 C.F.R. 1.17(h) in support of the suspension or waiver of the rules pursuant to 37 C.F.R. 1.47(a); and
- 5) A petition for a four month extension of time for response to the Notice to File Missing Parts of June 14, 2004 to and including December 14, 2004 and the required fee.

Checks in the amounts of \$992.00, \$130.00 and \$1,590.00 are enclosed in payment of all required fees. If the enclosed amount is insufficient, please debit TraskBritt Deposit Account.

Serial No. 10/814,801

No. 20-1469 for the remainder of the fee. If the amount is in excess of that required, please credit that deposit account.

Respectfully submitted,



Edgar R. Cataxinos
Registration No. 39,931
Attorney for Applicants
TRASKBRITT
P.O. Box 2550
Salt Lake City, Utah 84110-2550
Telephone: 801-532-1922

Date: December 14, 2004

ERC/dlm:dn

Enclosures: Copy of Notice to File Missing Parts of Application
Check No. 21203 in the amount of \$992.00
Declaration and Power of Attorney (9 total pages)
Check No. 7121 in the amount of \$130.00
Declaration by Debra L. Mitchell Regarding Efforts to Reach Inventor Robert
Mosbauer (3 pages) with attached Exhibits A through E
Petition for Extension of Time
Check No. 7117 in the amount of \$1,590.00

Document in ProLaw



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Dionne et al.

Serial No.: 10/814,801

Filed: March 31, 2004

For: OSMOTIC PUMP WITH MEANS
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Express Mail Mailing Label Number: EL994824269US

Date of Deposit with USPS: December 14, 2004

Person making Deposit: Steve Wong

**DECLARATION OF DEBRA L. MITCHELL REGARDING EFFORTS TO REACH
INVENTOR ROBERT MOSBAUER**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I am a paralegal with the law firm of TraskBritt, P.C., located at 230 South 500 East, Suite 300, Salt Lake City, Utah 84102 and work under the supervision of Edgar R. Cataxinis, Reg. No. 39,931, Applicants' attorney in the above-referenced patent application.

Upon receipt of a Notice File Missing Parts of NonProvisional Application dated June 14, 2004, I prepared and sent Declarations for Patent Application (with Power of Attorney) on June 24, 2004 to each inventor individually at addresses provided by ALZA Corporation, as each inventor was no longer in the employee of the company (See Exhibit A). Correspondence was

sent via Federal Express with preaddressed, postage prepaid return envelopes provided. In due course, I received executed documents from inventors, Keith E. Dionne, Craig R. Davis and John R. Peery.

When documents were not received by Mr. Mosbauer, I attempted to contact him regarding the status of returning the executed Declaration. Using a home telephone number provided by an ALZA Corporation representative and confirmed by an internet locator service, I called Mr. Mosbauer on September 8, 2004. Contact was again made to the inventor on September 22, 2004, by Cyndi S. King by sending documents to his last-known e-mail address (See Exhibit B).

On October 13, 2004, I left a message on his answering machine, re-sent the documents electronically to his e-mail address and also sent another copy of the Declaration to Mr. Mosbauer with a preaddressed, postage prepaid envelope in which to return the executed document, again by Federal Express, with delivery confirmation for the package. I received a confirmation e-mail that the Federal Express package was delivered on October 14, 2004 at 1:21 PM (See Exhibit C).

Again, on November 9, 2004, I telephoned the inventor without receiving an answer, sent a third electronic copy to Mr. Mosbauer's e-mail address and sent a third copy of the Declaration with a preaddressed, postage prepaid envelope, again by Federal Express, with delivery confirmation for the package. I received a confirmation e-mail that the Federal Express package was delivered on November 10, 2004 at 1:37 PM (See Exhibit D).

Finally, on December 9, 2004, I called the inventor again with no answer, and sent an e-mail reminder of the final deadline with an attached copy of the Declaration (See Exhibit E).

I have not received the executed Declaration from Mr. Mosbauer, either by Federal Express, electronically, or otherwise.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are

Serial No. 10/814,801

punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

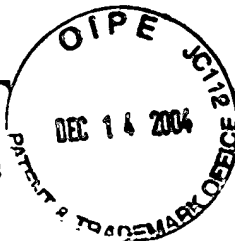
December 14, 2004
Date

Debra L. Mitchell
Debra L. Mitchell

Document in ProLaw

TRASKBRITT

Intellectual Property Attorneys



June 24, 2004

DEBRA L. MITCHELL

DIRECT DIAL: (801) 994-8734

DIRECT E-MAIL: dlmitchell@traskbritt.com

Robert Mosbauer
79 Cliffside
Daly City, CA 94015

VIA FEDERAL EXPRESS

Re: U.S. PATENT APPLICATION
Invention OSMOTIC PUMP WITH MEANS FOR DISSIPATING
INTERNAL PRESSURE
Inventor Dionne et al.
Assignee ALZA Corporation
Application No. 10/814,801
Filing Date March 31, 2004
Your Ref No. ALZ5018/2697
Our Case No. 3139-6349.1US

Dear Mr. Mosbauer:

Enclosed for your signature is the Declaration for Patent Application (With Power of Attorney) and Assignments to **ALZA Corporation**, for filing not only in the United States Patent and Trademark Office, but also in Taiwan, Venezuela and Chile.

Please sign and date Declaration and Assignments (before a Notary Public if indicated on the bottom of the Assignment) at your earliest convenience. Please return these executed documents to us by **June 28, 2004** for filing with the appropriate patent offices. Enclosed for your convenience is a pre-paid, return address FedEx envelope. We appreciate your assistance and immediate attention to this matter.

Very truly yours,

Debra L. Mitchell
Paralegal

ERC/dlm

Enclosures: as noted above

Document in ProLaw

Exhibit A

230 South 500 East, Suite 300 Salt Lake City, Utah 84102 P.O. Box 2550 Salt Lake City, Utah 84110 Tel: 1.801.532.1922 1.800.900.2001 Fax: 1.801.531.9168



Debra Mitchell

From: Cyndi King
Sent: Wednesday, October 13, 2004 1:50 PM
To: Debra Mitchell
Subject: FW: URGENT
Importance: High

Here's the last thing I sent to him.

Cyndi Skordas King
 Telephone: (801) 994-8746
 e-mail: CSKing@traskbritt.com

-----Original Message-----

From: Cyndi King
Sent: Wednesday, September 22, 2004 5:58 PM
To: 'r.mosbauer@excite.com'
Subject: URGENT
Importance: High

Dear Ms. Mosbauer,

Thank you for speaking with me this afternoon. As indicated in our conversation, we represent ALZA Corporation in the prosecution of their patent application for the invention entitled "OSMOTIC PUMP WITH MEANS FOR DISSIPATING INTERNAL PRESSURE," previously filed and pending in the United States and with the PCT.

ALZA has also filed this application in Chile, Taiwan and Venezuela, along with a utility conversion application in the United States. As one of the inventors on this application, we are now required to file an Assignment and Declaration from you with each of these countries.

Attached above are the Assignments for Chile, Taiwan, Venezuela and the U.S., along with a Declaration to be filed in the U.S.

PLEASE NOTE: the Assignments for Chile, Venezuela and the U.S. must be signed before a Notary Public.

At your earliest convenience, would you please sign and date the documents, have them notarized as indicated above, and return all of the original documents directly to me. My name and address are indicated below. If you have any questions or if you are unable to open or access any of these documents, please contact me immediately. Thank you for your help.

Sincerely,
Cyndi Skordas King
 Paralegal
 TRASKBRITT
 230 South 500 East, Suite 300
 P. O. Box 2550
 Salt Lake City, UT 84110-2550
 Telephone: (801) 994-8746
 Fax: (801) 531-9168

e-mail: CSKing@traskbritt.com

CONFIDENTIALITY NOTICE

This message, together with any attachments, may be legally privileged and is confidential information intended only for the use of the individual or entity to which it is addressed. It is exempt from disclosure under applicable law including court orders. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution or copy of this message, or any attachment thereto, is strictly prohibited. If you have received this message in error, please notify the original sender and delete this message, along with any attachments, from your computer.

10/13/2004

TRASKBRITT

Intellectual Property Attorneys

(650) 755-6458

October 13, 2004

DEBRA L. MITCHELL

DIRECT DIAL: (801) 994-8734

DIRECT E-MAIL: dlmitchell@traskbritt.com

Robert Mosbauer
79 Cliffside
Daly City, CA 94015

VIA FEDERAL EXPRESS

Re: U.S. PATENT APPLICATION
Invention OSMOTIC PUMP WITH MEANS FOR DISSIPATING
INTERNAL PRESSURE
Inventor Dionne et al.
Assignee ALZA Corporation
Application No. 10/814,801
Filing Date March 31, 2004
Your Ref No. ALZ5018/2697
Our Case No. 3139-6349.1US

Dear Mr. Mosbauer:

Enclosed for your signature is the Declaration for Patent Application (With Power of Attorney) and Assignment to **ALZA Corporation**, for filing in the United States Patent and Trademark Office.

Please sign and date Declaration and Assignment before a Notary Public at your earliest convenience. Please return these executed documents to us by **October 22, 2004** for filing with the appropriate patent offices. Enclosed for your convenience is a pre-paid, return address FedEx envelope. We appreciate your assistance and immediate attention to this matter.

Very truly yours,



Debra L. Mitchell
Paralegal

ERC/dlm
Enclosures: as noted above

Document in ProLaw

Exhibit C

230 South 500 East, Suite 300 Salt Lake City, Utah 84102 P.O. Box 2550 Salt Lake City, Utah 84110 Tel: 1.801.532.1922 1.800.900.2001 Fax: 1.801.531.9168



Debra Mitchell

From: FedEx [donotreply@fedex.com]
Sent: Thursday, October 14, 2004 2:24 PM
To: Debra Mitchell
Subject: FedEx shipment 791361272649

Our records indicate that the shipment sent from TRASK BRITT/TraskBritt, P.C to Robert Mosbauer has been delivered.
The package was delivered on 10/14/2004 at 1:21 PM and signed for or released by 3785346.

The ship date of the shipment was 10/13/2004.

The tracking number of this shipment was 791361272649.

FedEx appreciates your business. For more information about FedEx services, please visit our web site at <http://www.fedex.com>

To track the status of this shipment online please use the following:
[http://www.fedex.com/cgi-bin/tracking?tracknumbers=791361272649
&action=track&language=english&cntry_code=us](http://www.fedex.com/cgi-bin/tracking?tracknumbers=791361272649&action=track&language=english&cntry_code=us)

Disclaimer

FedEx has not validated the authenticity of any email address.

Debra Mitchell

From: Debra Mitchell
Sent: Wednesday, October 13, 2004 2:04 PM
To: Robert Mosbauer (r.mosbauer@excite.com)
Subject: ALZA 5018/2697 (6349.1US)

Dear Mr. Mosbauer,

Attached for your signature are the Declaration and Assignment for the above-referenced ALZA application. Unfortunately we have an approaching deadline to file these items with the United States Patent and Trademark Office, and I apologize for any inconvenience to you in handling these documents. If there is anything whatsoever we can do to assist you, please let us know.



Declaration.doc (49 KB)



Assignment.doc
(123 KB)

Thank you,

Debra L. Mitchell
Paralegal
TraskBritt, P.C.
230 South 500 East, Suite 300
Salt Lake City, Utah 84102
Phone: (801) 532-1922
Facsimile: (801) 531-9168

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TRASKBRITT

Intellectual Property Attorneys

(650) 755-6458

November 9, 2004

DEBRA L. MITCHELL

DIRECT DIAL: (801) 994-8734

DIRECT E-MAIL: dlmitchell@traskbritt.com

Robert Mosbauer
79 Cliffside
Daly City, CA 94015

VIA FEDERAL EXPRESS

Re: U.S. PATENT APPLICATION
Invention OSMOTIC PUMP WITH MEANS FOR DISSIPATING
INTERNAL PRESSURE
Inventor Dionne et al.
Assignee ALZA Corporation
Application No. 10/814,801
Filing Date March 31, 2004
Your Ref No. ALZ5018/2697
Our Case No. 3139-6349.1US

Dear Mr. Mosbauer:

Enclosed for your signature is the Declaration for Patent Application (With Power of Attorney) and Assignment to **ALZA Corporation**, for filing in the United States Patent and Trademark Office.

Please sign and date Declaration and Assignment before a Notary Public at your earliest convenience. Please return these executed documents to us by **NOVEMBER 14, 2004** for filing with the patent office. Enclosed for your convenience is a pre-paid, return address FedEx envelope. We appreciate your assistance and immediate attention to this matter.

Very truly yours,



Debra L. Mitchell
Paralegal

ERC/dlm

Enclosures: as noted above

Document in ProLaw

230 South 500 East, Suite 300 Salt Lake City, Utah 84102 P.O. Box 2550 Salt Lake City, Utah 84110 Tel: 1.801.532.1922 1.800.900.2001 Fax: 1.801.531.9168



Exhibit D

Debra Mitchell

From: FedEx [donotreply@fedex.com]
Sent: Wednesday, November 10, 2004 2:41 PM
To: Debra Mitchell
Subject: FedEx shipment 790333291946

Our records indicate that the shipment sent from TRASK BRITT/TraskBritt, P.C to Robert Mosbauer has been delivered.
The package was delivered on 11/10/2004 at 1:37 PM and signed for or released by 3785346.

The ship date of the shipment was 11/09/2004.

The tracking number of this shipment was 790333291946.

FedEx appreciates your business. For more information about FedEx services, please visit our web site at <http://www.fedex.com>

To track the status of this shipment online please use the following:
[http://www.fedex.com/cgi-bin/tracking?tracknumbers=790333291946
&action=track&language=english&cntry_code=us](http://www.fedex.com/cgi-bin/tracking?tracknumbers=790333291946&action=track&language=english&cntry_code=us)

Disclaimer

FedEx has not validated the authenticity of any email address.

Debra Mitchell

From: Debra Mitchell
Sent: Tuesday, November 09, 2004 3:34 PM
To: Robert Mosbauer (r.mosbauer@excite.com)
Cc: Edgar Cataxinos; Jolanta Pence (jpence@corus.jnj.com)
Subject: FW: ALZA 5018/2697 (6349.1US)

Mr. Mosbauer,

Just a reminder that we have an upcoming deadline of **November 14, 2004** to file the signature documents in the above-referenced patent application for ALZA. Attached are the documents which can be printed and executed. If we can do anything further from here to assist you, please do not hesitate to contact us.

Thank you for your time and consideration,
~Debra

-----Original Message-----

From: Debra Mitchell
Sent: Wednesday, October 13, 2004 2:04 PM
To: Robert Mosbauer (r.mosbauer@excite.com)
Subject: ALZA 5018/2697 (6349.1US)

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Assignment.doc (123 KB)

Thank you,

Debra L. Mitchell
Paralegal
TraskBritt, P.C.
230 South 500 East, Suite 300
Salt Lake City, Utah 84102
Phone: (801) 532-1922
Facsimile: (801) 531-9168

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Debra Mitchell

From: Debra Mitchell
Sent: Thursday, December 09, 2004 8:54 AM
To: Robert Mosbauer (r.mosbauer@excite.com)
Cc: Edgar Cataxinos; 'Jolanta Pence'
Subject: FW: ALZA 5018/2697 (6349.1US) URGENT REQUEST

Mr. Mosbauer,

We note the upcoming deadline of **December 14, 2004** as the final deadline to respond to the United States Patent and Trademark Office in filing the signature documents for the above-referenced application. We would appreciate your assistance in signing and returning the attached Declaration and Assignment prior to that deadline. If you have any questions or need anything further, please let us know.

Thank you,

Debra L. Mitchell
Paralegal
TraskBritt, P.C.
230 South 500 East, Suite 300
Salt Lake City, Utah 84102
Phone: (801) 532-1922
Facsimile: (801) 531-9168

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-----Original Message-----

From: Debra Mitchell
Sent: Tuesday, November 09, 2004 3:34 PM
To: Robert Mosbauer (r.mosbauer@excite.com)
Cc: Edgar Cataxinos; Jolanta Pence (jpence@corus.inj.com)
Subject: FW: ALZA 5018/2697 (6349.1US)

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Thank you for your time and consideration,
~Debra

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Sent: Wednesday, October 13, 2004 2:04 PM
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Subject: ALZA 5018/2697 (6349.1US)

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Exhibit E



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Assignment.doc (123 KB)

Thank you,

Debra L. Mitchell
Paralegal
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Facsimile: (801) 531-9168

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